

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
CONSERVATION DISTRICTS DIVISION

March 1, 1978

TO: O. M. Ueland, Administrator, CDD
FROM: W. W. Rehmann, Range Specialist, CDD *W. W. Rehmann*
INRE: Comparison Analysis of the Montana Streambed and Land Preservation
Act (310) and the recently revised 404 permit procedures

My understanding of the two laws is that they are for all practical purposes duplicative, with the Montana statute covering broader areas of construction activities on more streams. I feel that the Montana statute should suffice in all areas of 404 permit activities with the possible exception of the public notice procedures and coverage for wetlands.

I have divided the analysis by putting 404 on the left of the page and the Montana Statute (310) on the right.

WWR:km
Attachment

- h ii d. "Headwaters" - point on stream above which the flow is normally less than 5 cfs'.

"Discharge of dredged material"

"Discharge of fill material"

- a. That a water quality certification under sec. 401 is obtained or that state has waived right.
- c. That the discharge will not be located in the proximity of a public water supply intake.
- d. That the discharge will not contain unacceptable levels of pathogenic organisms in areas involving physical contact recreation.
- e. Not in areas of shellfish
- f. That the discharge will not destroy or endanger the critical habitat of a threatened or endangered species.
- f. General policies for evaluating permits. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. . . all factors that may be relevant to the proposal must be considered: among these factors are, conservation, economics, aesthetics, environmental concerns, historic values, fish & wildlife values, flood damage prevention, land use class, navigation, recreation, water supply, water quality, the needs of the people. No permit will be granted unless its issuance is found to be in the public interest.

Perennial Stream - a stream which in its natural state historically flows continuously at all seasons of the year during dry as well as wet.

"Project" - means a physical alteration or modification of stream".

Fish & Game already notified Dept. of Health & Environmental Sciences in cases of 401 permits.

Not clearly spelled out in detail in our law but supervisors do in fact use these kind of guidelines.

Fish and Game

Similar to wording in our law.

Corps of Engineers

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- 2) General criteria. The relative extent to the public and private need for the work. The desirability of using alternative approaches, & locations. The extent and permanence of the benefit or detrimental effects. The probable cumulative effect of the proposal.

Similar to working in our law.

"Effect on Wetlands"

Not applicable

"Effects Fish & Wildlife." Officials will consult with US FWS & state F&G

Fish & Game

"Effect on Water Quality" applications will be evaluated with a view toward compliance with applicable water quality standards during construction & operation. 401 permit.

Fish & Game notifies Dept. of Natural Resources & Conservation and Dept. of Health & Environmental Sciences.

Historic scenic, recreational values: full evaluation of the general public interest.

Similar to our law

Unauthorized activities. The District Engineer shall immediately issue a cease and desist order and possible injunction. Other penalties.

Violation and complaint forms under our law provide this and districts have authority to do this.

Processing applications. District Engineer shall issue public notice.

District meetings are monthly on regular basis and are public.

The notice shall include the following items of information.

1. Name & address of applicant.
2. The location of proposed activity.
3. Brief description, its purpose and use - type of material to be used.
4. A plan & elevation drawing showing general & specific site.
5. A list of other permits obtained.
6. Need
7. Reasonable period of time, normally 30 days for interested parties to express views.

(We might be able to publish in local paper before meeting.)

All this information is on file in the District Office.

No provision currently, would have to modify.

Public meetings. May hold. If a meeting is held, notice will be published 30 days in advance.

If need arises they are possible under our law.

EPA Title 40 CFR 230.

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Evaluation procedures. Upon issuance of public notice required in 33 CFR (209.120j) the District Engineer shall send copy of the public notice to the Regional Administrator.

Can send copy to DHES as compliance.

The District Engineer shall make use of the following short form application procedures where applicable. Minimal environmental impact.

Fully agree.

The remaining sections of 40 CFR 230 are basically the same as Corps of Engineers 33 CFR 209.20